IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5749 OF 2006

Shri Kamlakar Ramchandra Patil & Ors ...Petitioners
V/s.
Shri Vijay Harishankar Patil & Ors. ...Respondents

Shri Vijay Gharat for the Petitioners.
Shri Rahul Thakur for the Respondents.

CORAM : V.M. KANADE, J.

DATED : MARCH 16, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. The petitioners are challenging the order passed by the District Judge, Raigad, dated 19th June, 2006 on Misc.Civil Application No.96/2005 filed by the petitioners for condonation of delay.

3. The case of the petitioners is that there is a delay of 10 days in filing the appeal before the District Judge, Raigad. A suit for partition was filed by the plaintiffs and in the said suit, Consent Terms were filed by the parties and a preliminary decree in

terms of the Consent Terms was passed on 21.3.84. Subsequently, the final decree was passed on 8th July, 2005.

4. Being aggrieved by the said final decree, the petitioners preferred a civil appeal in the court of District Judge. However, there is a delay according to the petitioners of 10 days in filing the appeal, therefore, they filed application for condonation of delay.

5. The learned Counsel for the petitioners submitted that the District Court has wrongly held that the date of decree is not dated 8th July, 2005 but it relates back to 21.3.84 on which compromise decree was passed after Consent Terms were filed by the parties. He submitted that on that ground, the Court held that there was inordinate delay in filing the appeal and dismissed the application. He submitted that final decree having been passed on 8th July, 2005, a delay was only 10 days.

6. The learned Counsel on behalf of the respondents, on the other hand, submitted that in the prayer clause which has been mentioned in the appeal filed by the petitioners, he has prayed for setting aside the Consent Terms which are filed by the parties. He submitted that therefore, the District Court had rightly held that the date of the decree was 21.3.84 and not 8.7.05. He further submitted that even on merits, the appeal was liable to be dismissed. In support of the said submission, he wanted to cite the subsequent events which had taken place.

7. In my view, it is not necessary to go into the merits of the appeal at this stage because the only question which falls for consideration before this court is whether the impugned order is proper or not.

8. In my view, the District Court has completely erred in law in holding that the date of the decree is 21.3.84. It is well settled position in law in cases where suit for partition is filed, a preliminary decree can be passed by the Court and after actual partition, a

final decree has to be passed. In the present case, admittedly, the final decree has been passed on 8.7.2005. The appellate court, therefore, has erred in relying on the provisions of order XX Rule 7 of the CPC in holding that the decree must necessary bear the date on which the judgment was pronounced and the date when the decree has been drawn up in accordance with the judgment. He has erred that this date related back to 21.3.84. This finding of the appellate court to say the least is incorrect and illegal. Once it is held that a final decree is passed on 8.7.05, then the delay which is caused in filing the appeal is only 10 days. In my view, sufficient cause has been shown by the petitioners for condonation of delay. Delay, therefore, caused in filing the misc.appeal liable to be condoned.

9. The impugned order is set aside. The District Court is directed to decide the appeal on merits, as expeditiously as possible.

10. All contentions raised by both the parties are kept open and these contentions shall be decided on

merits.

11. The statement of the learned counsel for the petitioners that he is not challenging the Consent Terms but only is challenging the manner in which the partition is effect is recorded.

12. With these directions, writ petition is made absolute in the above terms. The connected Civil Application is also disposed of.

(V.M. Kanade, J.)